IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 31264 of 2007(V)

EP 94/07 IN OS.551/2003 of MUNSIFF COURT, HOSDRUG

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PETITIONER:

P.RAMDAS, AGED 41 YEARS,
S/O. LATE C.M.KUNHAMBU, CHATHAMATH, PAROLE VILLAGE
HOSDURG TALUK, P.O. CHATHAMATH, KASARGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENT:

P.MANIKKAM, W/O. LATE C.M.KUNHAMBU,
CHATHAMATH, PAROLE VILLAGE, HOSDURG TALUK,
P.O. CHATHAMATH, KASARGOD DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.31264 of 2007

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Dated this the 22nd day of October, 2007.

JUDGMENT

This Writ Petition is filed to quash the order dated 18.9.2007 directing to sell the property as contained in Ext.P1. The court had directed to sell the property on 22.10.2007. The main grievance of the petitioner is that his counter statement has not been considered at all. The extent of the property proposed to be sold is 35 1/2 cents. The writ petitioner has contended that the property is worth Rs.20,000/- per cent and for the discharge of the decree debt, sale of a portion of the property will be sufficient. The Apex Court as well as this court had held in very many decisions that when the decree debt can be satisfied by selling a portion of the property the court has to apply its mind and find it out. It is an imperative duty cast upon the court. Unfortunately, I find that the learned Munsiff has not adverted to those principles and therefore a fresh consideration of the matter is necessary.

2. Therefore, I direct the court below to defer the sale which is posted today and consider the counter statement of the petitioner and after hearing both sides, pass a considered order and then proceed with the sale in accordance with law.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 22/10